IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

RFA No.310 of 1997 & RFA No.319 of 1997.

Reserved on:13.09.2007

Date of Decision:October 29, 2007

For title, please see over-leaf:

Coram

The Hon'ble Mr. Justice Kuldip Singh,Judge

Whether approved for reporting?[1] Yes

For the appellant]
]
For the respondents]

Please, see over-leaf:

Kuldip Singh, Judge.

This judgment shall dispose of RFA No.310 of 1997 and RFA No.319 of 1997 which have arisen out of LAC No.36/93 and LAC No.35/93 respectively decided by common award dated 24.7.1997 passed by learned District Judge, Chamba Division, Chamba.

2. The facts, in brief, are that State of Himachal Pradesh for acquiring land for Chamera Dam reservoir in *Mohal Saru* issued notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') which was published on 20.6.1992. The Land Acquisition Collector (for short 'Collector') announced the award on 15.4.1993. The

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[1] ***Whether reporters of Local Papers are allowed to see the Judgment***? Yes

following are the details of land acquired and compensation awarded by the Collector as shown in Para-3 of the impugned award:-

Sr.No.	No. & title of the petition	Area of Land	Amount of Compensation Awarded.
1.	LAC No.35/93 (RFA No.319/97) Gian Chand Vs. Chief Engineer, CHEP & Ors.	10-4 Bighas	Rs.1,60,954/-
2.	LAC No.36/93 (RFA No.310/97) Ganga Ram & Anr. Vs. Chief Engineer CHEP & Ors.	11-15 Bighas	Rs.1,15,183/-

3. The Collector awarded compensation at different rates in respect of different kinds of land. The details of various kinds of land of the land owners which has been acquired in these cases and details of rate of different kinds of land, as mentioned by learned District Judge in Para-4 of the impugned award are as follows:-

Sr.No.	No. & title of the petition	Details of total area acauired.	Rate per Bigha.
1.	LAC No.35/93 (RFA No.319/97) Gian Chand Vs. Chief Engineer, CHEP & Ors.	**10-4 Bighas**	
		1-8-0 Dhani Awbal	Rs.27,059/-
		6-3-0 Barani Awbal	Rs.19,753/-
		2-13-0 Gair Mumkin Darya	Rs.600/-
2.	LAC No.36/93 (RFA No.310/97) Ganga Ram & Anr. vs. Chief Engineer CHEP & Ors.	**11-15 Bighas**	
		3-13-0 Dhani Awbal	Rs.27,059/-
		6-10-0 Barani Awbal	Rs.19,753/-
		1-12-0 Gair Mumkin Gharat Burd.	Rs.600/-

4. The land owners were aggrieved by the compensation awarded by the Collector, therefore, they preferred reference petitions under Section 18 of the Act. The learned District Judge enhanced the compensation as follows:-

Sr.No.	**No. & title of the petition**	**Amount of Compensation Awarded by the Collector.**	**Awarded by the Court.**	**Net amount of enhanced compensation.**
1.	LAC No.35/93 (RFA No.319/97) Gian Chand. Vs. Chief Engineer, CHEP & Ors.	Rs.1,60 ,954/-	Rs.2,27,510/-	Rs.66,556/-
2.	LAC No.36/93 (RFA No.310/97) Ganga Ram & Anr Vs. Chief Engineer CHEP & Ors.	Rs.1,15,183/-	Rs.3,26,190/-	Rs.2,11,007/-

The Chamera Hydro Electric Project filed the above appeals against the impugned award.

5. I have heard the learned counsel for the parties and gone through the record. The learned counsel for the appellant has submitted that learned District Judge has awarded excess compensation to the land owners. The sale deeds Ext.PA and Ext.PB with their average sale price have been wrongly relied by learned District Judge for assessing the market value of the acquired land. The sale deed Ext.R-1 has been wrongly ignored for assessing the market value of the acquired land. The method adopted by learned District Judge for assessing the market value of the acquired land is wrong, the evidence on record has not been properly appreciated. The land owners are not entitled to enhancement

of compensation over and above what has been awarded by the Collector. The land owners have failed to prove their case for enhancement of compensation by leading cogent evidence on record. The learned counsel for the land owners in both the appeals has supported the impugned award.

6. PW-1 Madho Ram has stated that he has sold 3 Bighas land to Radha Soami Satsang at Udaipur vide sale deed Mark 'X'. In corss examination, he has stated that this land is situated on Chamba – Pathankot Road. The acquired land is below 3 Kilometers from Chamba – Banikhet road and is situated near River Ravi. PW-2 Ganga Ram has stated that his land and house is situated in village Katal, 6 Bighas land owned by him and 10-14 Bighas land owned by Gian Chand was acquired by Chamera Project. Their land was Barani Awbal irrigated. There were 25 fruit trees of different varieties on the acquired land. He purchased land in his own village at the rate of Rs.1500 per Biswa vide Mark 'A'. Their village is half Kilometer below Chamba – Pathankot Road having five minutes walk. The village Katal is adjacent to village Udaipur. At Udaipur the market price of the land is Rs.20,000 per Biswa.

7. PW-3 Gurdei, Registration Clerk has proved sale deed dated 18.12.1991 Ext.PA and sale deed dated 17.4.1993 Ext.PB. The land owners tendered in evidence Jamabandis Ext.PC, Ext.PD, Ext.PE and copy of award Mohal Thadi Ext.PF and copies of awards Ext.PG and Ext.PH. This is the entire evidence led by the land owners. Gurdei, Registration Clerk, again appeared as RW-1 and has placed on record sale deed dated 23.8.1990 Ext.R-1. This the only evidence led by the Project.

8. It has been contended on behalf of the appellant that vide sale deed Ext.PA land measuring 1-4 Bighas in Mohal Saru was sold by Sekho on 18.12.1991 to Ganga Ram for a consideration of Rs.21,000. Similarly vide sale deed Ext.PB land measuring 3 Bighas was sold by Madho Ram to Radha Soami Satsang for a consideration of Rs.3,60,000 on 17.4.1993 much after the publication of notification under Section 4 of the Act for acquiring the land which was published on 20.6.1992. It has been submitted that since the land sold by sale deed Ext.PB is after the publication of notification under Section 4 of the Act, therefore, learned District Judge has erred in relying sale deed Ext.PB for assessing the market value of the acquired land. It has also been submitted that the land owners have failed to lead evidence comparing the two sets of lands i.e. the acquired land and the land covered by sale deeds Ext.PA and Ext.PB. Therefore, the market value of the acquired land cannot be assessed on the basis of sale deeds Ext.PA and Ext.PB.

9. The notification under Section 4 of the Act was published on 20.6.1992. The sale deed Ext.PA is dated 18.12.1991 and the sale deed Ext.PB is dated 17.4.1993. The learned District Judge has recorded a finding that land covered by sale deed Ext.PB is situated in Mohal Udaipur which is adjoining to Mohal Saru. This finding has not been seriously disputed. The Apex Court in ***ONGC Ltd.*** *Versus* ***Sendhabhai Vastram Patel and others [(2005) 6 SCC 454],*** in Paras-11 and 15 has held as follows:-

> "While determining the amount of compensation payable in respect of the lands acquired by the State, indisputably, the market value therefor has

> to be ascertained. Although, there exist different modes for arriving at the market value for the land acquired; the best method, however, as is well known would be the amount which a willing purchaser of the land would pay to the owner of the land as may be evidenced by the deeds of sale. In the absence of any direct evidence on the said point, the court may take recourse to other methods viz. Judgments and awards passed in respect of acquisition of lands made ***in the same village and / or neighbouring villages.*** Such a judgment and award in the absence of any other evidence like deed of sale, report of expert and other relevant evidence, however, would have only evidentiary value.
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> Instances of sale in respect of the similar land situated ***in the same village and / or neighbouring villages should*** have been taken as guiding factors by the Reference Judge as also by the High Court. In the absence of any better evidence, the Reference Judge as also the High Court could have made addition in the sale prices for the land as evidenced by the said deeds of sale."

The sale deed Ext.PB is of land situated in Mohal Udaipur which is adjoining to Mohal Saru where acquired land is situated. Therefore, in view of the ***ONGC Ltd. Case (supra),*** sale deed Ext.PB has been rightly relied by learned District Judge in order to assess the market value of the acquired land. The other objection of the appellant that the sale deed Ext.PB was executed after the publication of notification under Section 4 of the Act for acquiring the land and, therefore, it cannot be taken into

consideration. This objection has also no force. It is not the case of the appellant that sale deed Ext.PB was executed in order to enhance the market value of the acquired land. The genuineness of the sale deed Ext.PB has not been questioned. The sale deed Ext.PB was executed about 10 months after the publication of notification under Section 4 of the Act but sale deed Ext.PB is genuine. There is nothing on record to show that in between 20.6.1992 the date of publication of notification under Section 4 of the Act and 17.4.1993 the date of execution of sale deed Ext.PB there was price hike in the area because of acquisition of land in question or due to any other factor. The Apex Court in ***Chimanlal Hargovinddas*** *Versus* ***Special Land Acquisition Officer, Poona and another [(1988) 3 SCC 751],*** has held that even post notification instances can be taken into account (i) if they are very proximate (ii) genuine (iii) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects. In ***State of Uttar Pradesh*** *Versus* ***Major Jitendra Kumar and others [(1982) 2 SCC 382],*** the Apex Court has accepted the sale deed which was executed three years after the notification under Section 4 of the Act. In the present case, the sale deed Ext.PB was executed about 10 months after the notification under Section 4 of the Act. The sale deed Ext.PB satisfies the norms laid down by the Apex Court in ***Chimanlal Hargovinddas's case (supra)***. Therefore, the learned Judge has committed no error in relying sale deed Ext.PB even though it has been executed after the notification under Section 4 of the Act. On the basis of average sale price of sale deeds Ext.PA and Ext.PB the learned District Judge has rightly calculated the sale price at Rs.68,750 per

Bigha. On this he has allowed 60% deduction to determine the market value of the acquired land. The 60% deduction on Rs.68,750 comes to Rs.41,250 and after deducting Rs.41,250 from Rs.68,750, the learned District Judge has assessed the market value of the acquired land at Rs.27,500 per Bigha at the time of acquisition. The Collector has awarded compensation at the rate of Rs.19,753 per Bigha in respect of Barani Awbal land. The Collector has awarded compensation as per classification of the land and same method has been adopted by the learned District Judge on the basis of inter-se ratio of the rates awarded by the Collector in respect of different kinds of land. The qualitywise assessment of the market value of the acquired land has not been questioned by either side. The learned District Judge has rightly appreciated the material on record. The learned District Judge has rightly assessed the market value of the Barani Awbal land at Rs.27,500 per Bigha, Dhani Awbal land at Rs.40,000 per Bigha, Gair Mumkin Darya at Rs.900 per Bigha, similarly learned District Judge has correctly awarded other statutory payments and interest. The appellant has failed to make out any case for interference regarding the assessment of market value of the acquired land made by the learned District Judge.

10. The land owners have placed on record Ext.PF Collector's award dated 21.7.1993 regarding Mohal Thadi where market value of Barani Awbal land has been assessed at Rs.27,500 per Bigha. The land covered by award Ext.PF was also acquired for Chamera Dam Reservoir. The learned District Judge in impugned award has also assessed the market value of the acquired land at Rs.27,500 per Bigha of Barani Awbal land. Therefore, even though award Ext.PF is of

different Mohal but still keeping in view the market value assessed in award Ext.PF it cannot be said that market value assessed by learned District Judge in the present case is on the higher side and for this reason also the market value assessed by the learned District Judge in the impugned award is just and reasonable.

11. The appellant has placed on record sale deed Ext.R-1 vide which 14 Biswas in Mohal Saru was sold by Dharmu to Amar Nath and Hans Raj on 23.8.1990 for a consideration of Rs.7000. The sale deed Ext.R-1 cannot be relied in order to assess the market value of the acquired land inasmuch as there is no evidence on record that the land sold vide sale deed Ext.R-1 was comparable with the acquired land.

12. The learned counsel for the appellant has submitted that reference petitions were time barred and learned District Judge had no jurisdiction to condone the delay and entertain time barred reference petitions. The Collector announced the award on 15.4.1993. The reference petitions in both the cases in hand were filed on 21.6.1993 before the Collector. In the reference Court in each case application under Section 5 of the Limitation Act was also filed by the land owners and pleaded that award was announced by the Collector on 15.4.1993 without serving notice under Section 12(2) of the Act. The land owners after the award, approached their counsel for filing the reference petitions and on his advice applied for obtaining the certified copies of award on 24.4.1993 which were made available on 28.5.1993 and the reference petitions were filed on 21.6.1993. These applications are supported by the affidavits of the concerned land owners. These applications have been contested by filing the replies but there is no specific denial to the

averments of want of notice under Section 12(2) of the Act to the land owners and date of application for obtaining certified copies of the impugned award and delivery of the certified copies. In Section 18 of the Act by virtue of Himachal Pradesh Amendment Act No.17 of 1986 Second proviso has been added to the following effect:-

> "Provided further that the Collector may entertain an application under this Section, after the expiry of period of six weeks but within a period of six months, if he is satisfied that the applicant was prevented by sufficient cause from making the application in time."

Therefore, in the present case, it is to be seen whether in view of the aforesaid Second proviso to Section 18 of the Act the reference petitions were filed within limitation or not.

13. The Collector announced the award on 15.4.1993 and admittedly the reference petitions were filed on 21.6.1993. In other words, the reference petitions were filed before the Collector on 67th day from the date of award. The Collector under Second proviso to Section 18 of the Act has the power to entertain the reference petitions after the expiry of period of six weeks mentioned in sub-section (2), but within a period of six months, if he is satisfied that the land owners were prevented by sufficient cause from making the reference petitions in time. The reference petitions in both the cases were filed well within six months from the date of award. The Collector made the reference in each case to the District Judge and it will be presumed that only after satisfying himself regarding limitation, the Collector made the reference.

Nobody, including the present appellant, challenged the order of reference made by Collector. Therefore, appellant cannot be permitted to question that the reference petitions were time barred. The applications filed by land owners under Section 18 of the Act for making reference to the District Judge were validly referred by the Collector and the finding recorded by learned District Judge on Issue No.2 regarding limitation in the impugned award is of no consequence. There was no jurisdictional error in entertaining and deciding the reference petitions by the learned District Judge because of limitation. Therefore, contention of learned counsel for the appellant that the reference petitions before the learned District Judge were time barred and not valid is rejected.

14. No other point was urged.

15. The result of the above discussion is that both the appeals being RFA No.310 of 1997 and RFA No.319 of 1997 are dismissed and impugned award in each appeal is upheld with no order as to costs.

October 29, 2007 ***(Kuldip Singh), J.***

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1. ***RFA No.310 of 1997:***

Chamera Hydro Electric Project. ***…Appellant.***

Versus

Ganga Ram & Ors. ***..Respondents.***

For the appellant: **Mr.Rajnish Maniktala, Advocate.**

For the respondents: **Mr.Ashok Sharma, Advocate, for respondents No.1 and 2.**

Mr.M.S.Chandel, Advocate General with Mr.M.L.Chauhan, Addl.A.G., for respondents No.3 and 4.

2. ***RFA No.319 of 1997:***

Chamera Hydro Electric Project. ***…Appellant.***

Versus

Gian Chand & Ors. ***..Respondents.***

For the appellant: **Mr.Rajnish Maniktala, Advocate.**

For the respondents: **Mr.AShok Sharma, Advocate, for respondent No.1.**

Mr.M.S.Chandel, Advocate General with Mr.M.L.Chauhan, Addl.A.G., for respondents No.2 and 3.

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